



Reserved on: 05.06.2024

Pronounced on: 21.06.2024

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A. No.3397 of 2021

in

C.S.No.574 of 2010

P.B.BALAJI, J.

This Application is taken out by the plaintiff in the suit seeking a direction to the 1st defendant to deposit all rents already collected as well as whenever accrued and received from sub-tenants occupying various portions of the suit schedule property, for the period commencing from 01.01.2019.

2. The suit has been filed for delivery of vacant possession of the suit property and damages for use and occupation for the period commencing from 01.10.2008, till the date of handing over possession. The case of the plaintiff is that they have purchased the suit property under a registered deed of sale, dated 22.12.2006 from the 34th respondent in the Application. The 1st respondent was a tenant under the 34th respondent and he refused to attorn the tenancy in favour of the plaintiff. A suit was filed in C.S.No.600 of 2007, challenging the sale deed executed by the 34th respondent in favour of the applicant/plaintiff. However, the said plaint was rejected by this Court



on 08.04.2009 and the same has become final.

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3. The gist of the claim of the applicant/plaintiff is that the 1st defendant is reaping unlawful benefits at the expense of the plaintiff, by collecting huge rental income and by paying only Rs.55,000/- per month as directed by this Court in and by order dated 31.01.2012.

4. I have heard Mr. R.Parthasarathy, learned Senior Counsel for Mr.Rahul Balaji, learned counsel for the Applicant and Mr. A.L.Somaiyaji, learned Senior Counsel for M/s. City Law Associates, counsel for Respondents 1 & 2.

5. Mr. R.Parthasarathy, learned Senior Counsel besides referring to the averments in the affidavit in support of the Application, would invite my specific attention to the order passed by this Court on 31.01.2012 in A.No.3059 of 2010 and the Judgment in Appeal against the said order by the Hon'ble First Bench of this Court on 18.01.2017 in OSA.Nos.259, 260 & 262 of 2012.



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6. The learned Senior Counsel would submit that the 1st defendant is liable to vacate and hand over vacant possession to the plaintiff and has nothing to defend in the suit, especially after dismissal of his suit in C.S.No.600 of 2007. He would also submit that the 1st defendant cannot continue to take advantage of the order of this Court passed way back in January 2012, directing deposit of Rs.55,000/- per month, in contrast to the huge rents being collected from various sub tenants in the suit property. He would also state that the 1st defendant has been collecting rents to the tune of several lakhs for the past decade and more and according to the learned Senior Counsel, the 1st defendant has profited to an extent of Rs.24,05,00,748/- even up to March 2024, while depositing a mere Rs.55,000/- every month, which totals to not even Rs.1,00,00,000/-. He would therefore pray for suitable orders being passed in the Application.

7.Per contra, Mr.A.L.Somaiyaji, learned Senior Counsel would submit that the order passed by this Court on 31.01.2012 has become final and



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though the same was challenged in Appeal, the direction regarding deposit of Rs.55,000/- every month was not interfered with. The learned Senior counsel would also submit that several sub-tenants have since vacated and new tenants have come to occupy the suit property, in respect of which he would place reliance on the additional counter affidavit filed by the 1st defendant and memo containing details of sub-tenants and the area under their occupation and the rents paid by them. He would therefore contend that the interim order as prayed for cannot be granted and any amount due and payable to the plaintiff can only be ascertained after trial and at the time of the suit being decided finally.

8. I have carefully considered the contentions and submissions advanced by the learned Senior Counsel on either side.

9. Admittedly, the plaintiff has laid the suit for recovery of possession and has also sought for the relief of damages with respect to use and occupation.

10. No doubt, in and by order dated 31.01.2012, the 1st defendant was



directed to deposit a sum of Rs.55,000/- per month to the credit of this suit.

Though the said order was taken up on Appeal by way of an Original Side Appeal, the Hon'ble Division Bench did not modify the direction regarding deposit of rent. However, in and by common judgment dated 18.01.2017, the Hon'ble Division Bench delivered the following terms:

“ 1. Any fresh tenants inducted by the 1st respondent would be only with advance intimation to the appellant and the lease deed be filed before the learned Single Judge.

2. The rights of the 1st respondent of lease are only till 31.12.2018 and thus, any sub-lease granted would have to be, at best, coterminous with the said date and not beyond that date.

3. The learned Single Judge to look into the issue of expedition of trial considering the limited scope of the controversy.”

11. Though the Hon'ble Division Bench had directed expedition of trial considering limited scope of controversy, unfortunately, the suit is still pending without any progress. It is admitted by the 1st defendant that fresh sub-tenants have been inducted by the 1st defendant and the 1st defendant has been collecting rents. No doubt, the 1st defendant has been complying with the order dated 31.01.2012 by depositing Rs.55,000/- per month to the credit of this suit. Though the Hon'ble Division Bench directed the lease



deeds in receipt of fresh tenants to be executed with advance intimation to the Applicant and besides also filing the said lease deeds before this Court, I find that there is no such compliance made by the 1st defendant. The Hon'ble Division Bench has also clearly held that the rights of the 1st defendant as under the lease is valid only until 31.12.2018 and any sub-lease granted would also be coterminous and consequently, would not survive beyond 31.12.2018.

12. Keeping the above judgment in mind, it is seen that the order passed by the learned Single Judge in A.No.3059 of 2010, was passed only in the then prevailing circumstances. Much water has flown since then and admittedly, even according to the 1st defendant, several sub-tenants have vacated and moved away and new sub-tenants have been inducted. The 1st defendant, admittedly, has been collecting huge rentals from his sub-tenants and the very right of the 1st defendant, inducting the sub-tenants to be in legal occupation after 31.12.2018 is legally questionable.



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13. It is an admitted statement of the 1st defendant, by way of a memo, the rents collected by the 1st defendant are in far excess of a sum of Rs.55,000/- and that in fact some of the tenants are paying more than a sum of Rs.1,00,000/- by way of monthly rent. In such circumstances, especially when the 1st defendant is keeping the plaintiff away from possession and at the same time benefiting by way of rental income, it would be fair and equitable to direct for the 1st defendant to deposit the entire rental income being collected from various sub-tenants presently occupying the suit property as on date, before this Court, more specifically to the credit of this suit in C.S.No.574 of 2010.

14. Though the Applicant has prayed for a direction to deposit the rents from 01.01.2019 onwards, considering that the issue of damages regarding use and occupation is at large in the suit and also taking into account the fact that the 1st defendant has been maintaining the property and claiming to be the owner of the superstructure, the issue of past arrears can be decided at the time of trial of the suit.



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15. In view of the above, I deem it fit to restrict the prayer of the Applicant from the period commencing with the date of the Application, i.e, January 2022 onwards.

16. In fine, the Application is *partly allowed* and the 1st respondent shall deposit the entire rental income that was accrued from the suit property from various sub-tenants right from January 2022 onwards till date and continue to deposit the same to the credit of this suit until further orders. The 1st defendant is also directed to prepare a statement of account of rental collections, once every three months and shall file the same before this Court.

21.06.2024

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Pre-delivery ORDER in

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